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9 and Gene A. Nelson in
10 Case No. 3:19-cv-04171-JCS

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SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA

11 UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 PACIFIC GAS AND ELECTRIC
18 COMPANY,

19 Defendant.

Case No. CR 14-00175 WHA

Related Case:

Case No. 3:19-cv-04171-JCS

**ADMINISTRATIVE MOTION
PURSUANT TO CIVIL L.R. 7-11 AND
PROPOSED ORDER TO CONSIDER
WHETHER CASES SHOULD BE
RELATED UNDER CIVIL L.R. 3-12;
AND PROPOSED ORDER THEREON**

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Pursuant to Civil Local Rules (“Civil L.R.”) 3-12 and 7-11, Plaintiffs in *Cannara, et al. v. Nemeth, et al.*, Case No. 3:19-cv-04171, filed on July 19, 2019 and pending before the United States District Court for the Northern District of California, hereby submit the instant Administrative Motion to Consider Whether Cases Should Be Related.

As set forth below, both *Cannara, et al. v. Nemeth, et al.* (“Related Case”) and *United States v. Pacific Gas & Elec. Co.* share a common factual background with which this Court is well-familiar: years of safety-related misconduct by investor-owned electric utility, Pacific Gas & Electric Company.

I. Applicable Standard Under Criminal L.R. 8-1 and Civil L.R. 3-12

Civil L.R. 3-12(a) explains an action is “related to another when: (1) the actions concern substantially the same parties, property, transaction or event; and (2) it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.”

Civil L.R. 3-12(b) explains when a “party knows or learns that an action, filed in or removed to this district is (or the party believes that the action may be) related to an action which is or was pending in this District as defined in Civil L.R. 3-12(a), the party must promptly file [this motion] in the lowest-numbered case... pursuant to Civil L.R. 7-11.”

Criminal L.R. 8-1 expressly contemplates instances where a civil and criminal matter may be related by its language: “any pending criminal action is related to another civil or criminal action...” As discussed herein, the civil case and the pending criminal probation both deal with Pacific Gas & Electric Company’s conduct – one in a criminal proceeding, and one in a civil action.

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II. *Cannara et al. v. Nemeth et al.* is Related to the Probation Imposed Upon the Defendant in *United States v. Pacific Gas & Electric Company* Because the Cases Share Substantially the Same Factual Background; One Judge Hearing Both Cases Would Promote Judicial Economy

Both actions call for the determination of substantially related questions of fact, spanning years of unlawful conduct by Pacific Gas & Electric Company (PG&E) which led to its criminal probation as overseen by this Court. The course of conduct attributed to PG&E in *Cannara et al. v. Nemeth et al.*, which underscores that case's various claims of relief, may inform this Court's disposition of PG&E's probation.

Indeed, PG&E's continuing pattern of unlawful conduct has caused this Court to issue a request for PG&E to supply information, including "a fresh, forthright statement owning up to the true extent" of investigatory news publications showing PG&E's repeated failure to engage in proactive safety practices, as detailed in "the Wall Street Journal report." (See *United States v. Pacific Gas & Elec. Co.*, Case No. CR 14-00175 WHA, Doc. 1075, p. 1:25-26, Request for Offender PG&E to Supply Information). This Court also asked for a similar statement addressing an ABC News revelation that "PG&E has made campaign contributions to political candidates, even quite recently. The offender... shall explain why those campaign contributions were more important than replacing or repairing the aging transmission lines described by the Wall Street Journal article..." (Doc. 1075, p. 2:2-7).

The related civil case alleges PG&E solicited and is set to receive an unlawful gift of public funds from the State of California through a bill passed after a substantial and pervasive campaign by PG&E to gain influence over the Legislature, as exposed by the very same ABC News revelation cited by this Court's July 10, 2019 request to PG&E. (See Complaint in Related Case, attached as Exhibit 1 to Declaration of Michael J. Aguirre, filed concurrently herewith, pp. 50:6-28, 51:1-22); (Doc. 1075, p. 2:1-9).

1 The now-passed bill, Assembly Bill (AB) 1054, will perpetually relieve
 2 PG&E from the consequences of its wildfire safety violations by passing them onto
 3 utility customers, violating their constitutional right to be free from unjust and
 4 unreasonable rates. (Aguirre Decl., Ex. 1, 42:13-28, 43-44, 45:1-14). AB 1054
 5 does so by setting up a fund through which the State of California will provide a
 6 potentially limitless amount of taxpayer and utility customer funds, \$10.5 billion at
 7 a time, to subsidize uninsured wildfire liabilities incurred by PG&E and its fellow
 8 investor-owned electric utilities (IOU). (Aguirre Decl., Ex. 1, p. 31:5-24).

9 PG&E ensured the passage of such a favorable law by spending millions
 10 upon millions to curry favor with the California Legislature. (Aguirre Decl., Ex. 1,
 11 pp. 32-37). The corporation's campaign contributions during the 2018 election
 12 cycle – \$550,000 to sitting legislators, \$1.32 million to state-level and local
 13 Democratic and Republican parties of California, and \$208,400 to Governor Gavin
 14 Newsom, followed by an intense lobbying campaign totaling \$10 million in 2018
 15 alone – were used to induce those politicians to pass Assembly Bill (AB) 1054.
 16 (Aguirre Decl., Ex. 1, pp. 33-37; Ex. 2; Ex. 3, pg. 2). An ABC 10 investigative
 17 report revealed PG&E in fact “spent almost \$12 million lobbying the state
 18 government and another \$14 million lobbying Congress in Washington, D.C.”
 19 (Aguirre Decl., Ex. 4, embedded video “Fire – Power – Money, Ep. 3 of 3,”
 20 timestamp 00:14:12 to 00:14:40).

21 In short, *Cannara et al. v. Nemeth et al.* seeks to demonstrate how PG&E and
 22 its fellow IOUs convinced the Legislature to pass on responsibility for wildfire
 23 costs from the blameworthy utilities to the blameless people of California. PG&E
 24 could, and should have, instead used such costs and employee time to examine and
 25 conduct critical maintenance on its transmission lines the July 12, 2019, article by
 26 the *Wall Street Journal* revealed PG&E knew was needed.

27 Facts that may be brought out in both matters include PG&E's admission by
 28 its letter to the California Public Utilities Commission (CPUC) Safety and

1 Enforcement Division dated July 3, 2019, that the utility has not met its
 2 maintenance targets as established in its own wildfire mitigation plan. (Aguirre
 3 Decl., Ex. 5). Additional evidence may involve a December 14, 2018, California
 4 Public Utilities Commission announcement of its investigation into whether
 5 PG&E's natural gas maintenance records were in fact *falsified*. (Aguirre Decl., Ex.
 6 6).

7 Considerations of judicial economy and administration of justice weigh
 8 strongly in favor of assigning the cases to the same district judge. Because both
 9 cases are rooted in PG&E's history of unlawful conduct and its activities before the
 10 California Legislature – a set of circumstances intertwined with this Court's
 11 already-pending case in which PG&E is a defendant – there would be substantial
 12 duplication of labor if the cases were heard by different judges.

13 Indeed, Plaintiffs in *Cannara et al. v. Nemeth et al.* have alleged a pattern of
 14 behavior by PG&E aimed at avoiding the consequences of its repeated violations of
 15 state fire safety standards instead of recognizing its duty to ensure, as this Court
 16 expressed in its January 9, 2019, Order to Show Cause to PG&E, that “safety must
 17 come first. *Only* safe operation will be allowed.” (Aguirre Decl., Ex. 1, pp. 32-38, ¶
 18 32) (See *United States v. Pacific Gas & Elec. Co.*, Case No. CR 14-00175 WHA,
 19 Doc. 961, p. 2:13-14, Order to Show Cause Why PG&E's Conditions of Probation
 20 Should Not Be Modified).

21 In summary, both the related civil lawsuit and the instant criminal action
 22 involve a substantially overlapping set of facts which are determinative to the
 23 disposition of both cases.

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CONCLUSION

Based on the foregoing, Plaintiffs in *Cannara, et al. v. Nemeth, et al.*, Case No. 3:19-cv-04171 respectfully submit that the actions listed above qualify as related cases and therefore request that they be transferred to the lowest numbered case District Court Judge.

AGUIRRE & SEVERSON, LLP

Dated: August 2, 2019

/s/Maria C. Severson
Maria C. Severson, Esq.,
Attorneys for Plaintiffs Alex Cannara
and Gene A. Nelson in
Case No. 3:19-cv-04171-JCS

PROPOSED ORDER

After having considered the Administrative Motion to Consider Whether Cases Should Be Related (Civil L.R. 3-12), filed on July 30, 2019 by the Plaintiffs of Case No. 3:19-cv-04171, the Court finds that:

___ *Cannara et al. v. Nemeth et al.* (Case No. 3:19-cv-04171) and the earlier-filed *United States of America v. Pacific Gas & Electric Company* (Case No. CR 14-00175 WHA) are related.

___ *Cannara et al. v. Nemeth et al.* (Case No. 3:19-cv-04171) and the earlier-filed *United States of America v. Pacific Gas & Electric Company* (Case No. CR 14-00175 WHA) are not related.

IT IS SO ORDERED.

Date: _____

HON. WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE